STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED July 25, 2006
v	No. 268188 Oakland Circuit Court
GER VANG, Defendant-Appellee.	LC No. 2004-199828-FH

Before: Jansen, P.J., and Murphy and Fort Hood, JJ.

PER CURIAM.

The prosecution appeals by leave granted an order suppressing an inculpatory statement made by defendant during an interview with police. The trial court concluded that the statement was involuntary because it was made under custodial circumstances and defendant was not informed of his *Miranda*[1] rights. We disagree. We reverse and remand for further proceedings consistent with this opinion.

The order appealed was entered after remand from a prior interlocutory appeal in which this Court reversed a similar, previous order suppressing defendant's statement. *People v Vang*, unpublished opinion per curiam of the Court of Appeals, issued December 13, 2005 (Docket No. 264317). The prosecution's initial argument is that the instant suppression order should be reversed because the trial court was prohibited, as a matter of law, from garnering additional evidence at a second *Walker*[2] hearing and entering a new decision, where this Court already ruled on the matter in the prior appeal. Although the prosecution's argument is poorly presented, lacking citation to legal authority and principles, we find credence in the gist of the argument. In the prior decision by this Court, the panel held:

> Under these circumstances, the trial court erred when it found that, for purposes of *Miranda*, defendant was in custody. A reasonable person in defendant's situation would not have believed he was not free to leave. Because defendant was not in custody, Edwards acted within the confines of the law when

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

[2] *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

> he questioned defendant without advising him of his *Miranda* rights. Any statements defendant made were voluntary and not subject to suppression for failure to receive *Miranda* warnings. [*Id.*, slip op at 2.]

This ruling is straightforward and clear, i.e., the statements were not to be suppressed, and the opinion did not open the door for the trial court to hold another hearing to take in more evidence and revisit the issue. The parties had the opportunity to provide whatever testimony they desired in the first hearing, and there is no indication that defendant was precluded from calling witnesses in support of his motion. "The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue." *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001). A question of law decided by the appellate court will not be decided differently on remand; however, the doctrine does not preclude reconsideration if there has been an intervening change of law. *Id.* Here, there was no intervening change in the status of the law. Additionally, the law of the case doctrine does not control if there has been a material change in facts. *South Macomb Disposal Auth v American Ins Co*, 243 Mich App 647, 654; 625 NW2d 40 (2000). Here, there was no change in facts, rather certain facts that were not presented at the first *Walker* hearing were presented at the second hearing despite no indication in the record that the testimony in the second hearing could not have been presented earlier. There was no claim that new facts came to light that were incapable of discovery earlier, nor did defendant assert that information produced at the second hearing was improperly kept from him previously. The trial court found support for a new hearing on the basis of this Court's statement in the earlier opinion that "[t]he record did not indicate that school personnel told defendant he had to meet with Edwards and answer questions." *Vang, supra*, slip op 2. However, this Court never remanded the case for further development of the issue, nor did the Court suggest that its entire holding hinged on this issue.

Regardless of whether the law of the case barred the issue from being revisited, suppression was not proper even when considering the testimony and evidence presented at the second hearing.

Whether a defendant was in custody for *Miranda* purposes is a mixed question of fact and law, which must be determined independently by this Court after review de novo of the record. *People v Coomer*, 245 Mich App 206, 219; 627 NW2d 612 (2001). In doing so, however, we will defer to the trial court's factual findings at a suppression hearing absent clear error. *Id.* A finding of fact is clearly erroneous if, "after reviewing the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made." *Id.*

Miranda v Arizona, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), established that statements of an accused made during custodial interrogation are generally inadmissible unless the accused voluntarily waived his Fifth Amendment rights against self-incrimination. *Miranda* warnings are required when a person is interrogated by police while officially in custody or if he or she has been otherwise deprived of freedom of action in any significant manner. *Coomer, supra* at 219; see also *Stansbury v California*, 511 US 318, 323; 114 S Ct 1526; 128 L Ed 2d 293 (1994). Courts must look to the totality of the circumstances at the time of an interview to determine whether a defendant was in custody for *Miranda* purposes. *Coomer, supra* at 219. The inquiry centers on whether the defendant could have reasonably believed that he was not free to leave. *Id.* Significantly, this inquiry must depend upon the objective circumstances of the interrogation rather than on the subjective views of either the person being questioned or the

interrogating officer. *Stansbury*, *supra* at 323; *Coomer*, *supra* at 219-220. Accordingly, here, the trial court erred to the extent it considered defendant's subjective feelings. Regardless, the evidence garnered at the second *Walker* hearing raises a question whether defendant's position and obligations as a student are facts that may be relevant to whether he reasonably believed that he was not free to leave the interview, which took place in a school office after school authorities directed him there.

The line between essentially custodial circumstances and otherwise pressure-filled but non-custodial circumstances may be hard to draw. This Court has cautioned, for instance:

> "Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer Miranda warnings to everyone whom they question. * * * Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.' It was *that* sort of coercive environment to which Miranda by its terms was made applicable, and to which it is limited." [*People v Eggleston*, 148 Mich App 494, 500; 384 NW2d 811 (1986), quoting *Oregon v Mathiason*, 429 US 492, 495; 97 S Ct 711; 50 L Ed 2d 714 (1977)(emphasis and ellipsis in original).]

Our Supreme Court has also asserted that "[t]he purpose of the *Miranda* rule is to redress the disadvantage inherent in a custodial setting, not to create a confrontational atmosphere in the more neutral noncustodial environment." *People v Hill*, 429 Mich 382, 399; 415 NW2d 193 (1987).

Whether the authoritative nature of a school environment weighs for or against a finding that circumstances were essentially custodial, or "police dominated," was addressed briefly in *People v Mayes (After Remand)*, 202 Mich App 181; 508 NW2d 161 (1993). There, this Court did not decide the issue whether a high school senior was in custody for *Miranda* purposes. *Id.* at 190-191. However, it considered the question in conjunction with the defendant's argument that his trial counsel was ineffective for failing to move for suppression of statements that the defendant made during an interrogation in a school office. *Id.* at 189-191. Within its discussion, this Court opined, "The detention was brief and occurred in a school principal's office rather than at the police station or a squad car. Thus, the questioning was noncustodial, and the environment was not 'police dominated.'" *Id*. at 190-191, citing *Berkemer v McCarty*, 468 US 420; 104 S Ct 3138; 82 L Ed 2d 317 (1984).

We now examine the totality of the circumstances of the interview in light of the testimony at the second *Walker* hearing regarding the school's common practices and disciplinary policies. Defendant was 17 years old and a high school junior when police officer Scott Edwards sought to interview defendant during the investigation of the sexual assault for which defendant was eventually charged. Edwards went to defendant's school during school hours and asked staff if he could speak to defendant. A staff person telephoned defendant's classroom, and defendant was escorted by staff to the interior office of a school administrator, where Edwards was waiting. At first, defendant did not know why he had been summoned. Edwards identified himself as a police officer, and defendant attested that Edwards then "told [him to] sit down and then started asking [him] questions." Defendant was not explicitly told

that he could leave at any time or that he was not required to answer Edwards's questions. However, defendant also did not ask to leave. Defendant felt that, if he left, he would "[g]et arrested" or "get in trouble." The two were alone during the interview, which lasted about one hour.

An associate dean of the school agreed that defendant was directed to go to the office and that, when a student fails to follow a directive, consequences including suspension could result. She agreed that students "really don't" have the option of saying, "no, thank you," and then sitting back down when teachers request that they go to the office. A student handbook that was introduced at the hearing also established that the code of conduct authorized disciplinary action "when a student refuses to honor the reasonable request of staff members." However, most significant to this appeal, the associate dean also testified that students were not required to speak to police officers and no disciplinary action would have been taken if defendant had refused to speak with Edwards. Rather, if a student refused, that student would "probably" be sent back to class.

We therefore conclude that the overall circumstances of the interview would not cause a reasonable person to believe that he was not free to leave. Edwards was in plain clothes and was not carrying a weapon. The office door was unlocked, as was evident because a staff person entered the room at least once during the interview to answer the phone or retrieve an item. Defendant also sat closest to the door. Defendant's testimony at the second *Walker* hearing confirmed that Edwards did not threaten him and that neither Edwards nor school staff members told defendant that he had to answer Edwards's questions or that he could not leave the room. Defendant also confirmed that he was not told that disciplinary action would be taken against him if he refused to comply. There was also no indication that defendant was under the influence of drugs or alcohol or that he had been recently deprived of food or sleep. Finally, Edwards did not arrest defendant and, after at most being escorted by Edwards from the office area after the interview, defendant then left the interview unescorted by school personnel.

We cannot conclude in this case that "there ha[d] been such a restriction on [defendant's] freedom as to render him 'in custody.'" *Mathiason, supra* at 495; *Eggleston, supra* at 500. Rather, despite that a student in defendant's position may reasonably have felt subject to the authority of both Edwards and the school, the objective facts do not suggest that he could reasonably feel that he was not free to leave; neither Edwards nor school officials directed him to speak or told him he could not leave and no school practice or policy specifically suggested that he would be disciplined for choosing not to speak to Edwards or for leaving the interview. Clearly, the school had no right or authority to physically force defendant to sit for the police interview. Defendant appears to have received no further direction after being told to report to the office.

Finally, after having reviewed the entire lower court record, we deem it appropriate to reassign the case to a different judge on remand, not because of any improprieties, but in order to preserve the appearance of justice and because, under the circumstances, it would be understandably difficult for the judge to put previously-expressed views out of mind. *People v Evans,* 156 Mich App 68, 72; 401 NW2d 312 (1986). Moreover, reassignment would not entail waste and duplication. *Id.* This ruling should not be viewed as any personal criticism of the trial judge; our concern is with the appearance of justice.

Reversed and remanded for proceedings before a different judge and otherwise consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ William B. Murphy
/s/ Karen M. Fort Hood